



Senate

General Assembly

February Session, 2006

File No. 103

Senate Bill No. 497

Senate, March 23, 2006

The Committee on General Law reported through SEN. COLAPIETRO of the 31st Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

***AN ACT CONCERNING THE DISCHARGING OF MECHANIC'S LIENS
BY GENERAL CONTRACTORS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (NEW) (*Effective October 1, 2006*) Notwithstanding the
- 2 provisions of chapter 847 of the general statutes, an original contractor
- 3 for the construction, raising, removal or repair of a residential building
- 4 or any of its appurtenances may cause a mechanic's lien regarding
- 5 such building or any of its appurtenances placed pursuant to the
- 6 provisions of chapter 847 of the general statutes by a subcontractor to
- 7 be discharged by the superior court for the judicial district in which the
- 8 lien may be foreclosed pursuant to section 51-345 of the general
- 9 statutes, upon sufficient showing to the court by such original
- 10 contractor that such contractor has been paid in full by the homeowner
- 11 or that the work which is the subject of such lien was performed in an
- 12 unworkmanlike manner.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2006</i>	New section
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GL *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill makes various changes to laws regarding mechanic's liens and has no fiscal impact.

The Out Years

There is no fiscal impact in the out years.

OLR Bill Analysis**SB 497*****AN ACT CONCERNING THE DISCHARGING OF MECHANIC'S LIENS BY GENERAL CONTRACTORS.*****SUMMARY:**

This bill allows an original (general) contractor to cause the discharge of a mechanic's lien placed on real estate by a subcontractor in connection with construction, raising, removal, or repair of a residential building if the original contractor can show in Superior Court that (1) the homeowner has paid the original contractor for the work or (2) the work that is subject of the lien was performed in an un-workmanlike manner. The bill does not specify whether the subcontractor is entitled to notice or an opportunity to be heard (see COMMENT).

EFFECTIVE DATE: October 1, 2006

BACKGROUND***Mechanic's Lien Law***

The law allows anyone who "has a claim for more than \$10 for material furnished or services rendered" related to improvements to real property to file a certificate of a mechanic's lien with the town clerk. It must be filed within 90 days after providing materials or completing the work, be sworn to, and include (1) a property description; (2) the amount claimed; (3) the name of the person against whom the lien is being filed; (4) the date when materials or services were first provided; and (5) a statement that the amount claimed is justly due, as nearly as can be ascertained. A mechanic's lien cannot attach in favor of a subcontractor for more than the amount that the owner has agreed to pay. A lien is not valid unless, within 30 days after filing the certificate, the lienor perfects it by serving a true and

attested copy on the property owner (CGS §§ 49-33 to 49-40a).

Discharge of Mechanic's Lien

By law, a property owner, when a mechanic's lien is placed on his property, may apply to Superior Court for a hearing to determine whether the lien should be discharged or reduced. The court must notify the lienor and set a hearing date. The law specifies the form for the application, order, and summons (CGS § 49-35a).

When the hearing is held, the burden is on the contractor, subcontractor, or supplier to show that there is probable cause to uphold the validity of his lien. Anyone entitled to notice can appear and be heard and prove that the validity of the lien should not be sustained or that the amount is excessive and should be reduced (CGS § 49-35b).

Dissolution of Lien or Substitution of Bond

The law also allows a property owner, when a mechanic's lien has been placed on his property, to apply to Superior Court to discharge the lien and substitute a bond in its place. The court must give reasonable notice to the contractor, subcontractor, or supplier. If the court is satisfied that the applicant plans, in good faith, to contest the lien and offers an adequate bond, the court must order the lien dissolved and substitute the bond. If the applicant, within 10 days, causes a copy of the order, certified by the clerk, to be recorded in the town clerk's office where the lien is recorded, the lien is dissolved. Whenever a bond is substituted, an action to recover on the bond must be brought within one year from the lien certificate's recording date (CGS § 49-37).

Duration of a Lien

After one year and if no action is pending, the lien is invalid and discharged as a matter of law (CGS § 49-39). Its continued existence without a release on the land records in no way affects the owner's title or the property's marketability (CGS § 49-40a).

COMMENT

Due Process Clause

The due process clause of the United States Constitution and the Connecticut Constitution prohibit the deprivation of a property interest without adequate notice and a meaningful opportunity to be heard (*Kukanskis v. Griffith*, 180 Conn. 501 (1980); *Taylor v. Commissioner of Revenue Services*, 48 Conn. Supp. 420 (2004)).

COMMITTEE ACTION

General Law Committee

Joint Favorable

Yea 15 Nay 0 (03/09/2006)